

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2127.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	May 10, 2004
DATE OF REPORT:	June 8, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	September 13, 2004

COMPLAINT ISSUES:

Whether the Spencer-Owen Community Schools and the Forest Hills Special Education Cooperative violated:

7-27-7(c) (2) by failing to provide the services identified in the agreed-upon individualized education program (IEP) no later than 10 instructional days after the case conference committee (CCC) meeting for a newly-enrolled student who had received special education services in another state, specifically by failing to provide during the period ending February 19, 2004:

- a. direct services from the teacher of record;
- b. speech/language services addressing vocabulary units;
- c. interpreter services; and
- d. other support services.*

7-27-4(c) by failing to utilize the CCC process to develop, review, and revise the student's IEP, specifically by revising the student's speech/language goal(s) and failing to take into consideration the student's language and communication needs.

7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to provide during the period from February 19, 2004, to April 21, 2004:

- a. direct services from the teacher of record;
- b. speech/language services addressing vocabulary units;
- c. interpreter services; and
- d. other support services.*

7-27-5(c) by failing to provide the parent with a copy of the written CCC report within 10 business days after the date of the date of the CCC meeting that convened on February 19, 2004.

7-27-7(a) by failing to implement the student's IEP as written, specifically by failing to provide progress reports that were on time and contained the information required by the IEP.

7-21-1(a) by failing to establish, maintain, and implement written procedures to provide for participation of and consultation with parents of students participating in special education, specifically by failing to:

- a. allow the parent to observe the student's speech/language sessions; and
- b. provide the parent with a copy of written policies and procedures regarding visiting/observing during school hours.

- * During the course of the investigation, the Complainant clarified that there was not an allegation that the School had failed to provide “other support services.” The letter of complaint used the term “support services” to encompass services from the teacher of record and the interpreter.

FINDINGS OF FACT:

1. The Student is 8 years old and is eligible for special education and related services due to a hearing impairment and communication disorder.
2. The Student had been found eligible for special education and related services in another state before moving to the State of Indiana. The Student’s case conference committee (CCC) met on December 5, 2004, and adopted the goals, objectives, and other parts of the out-of-state individualized education program (IEP) as the Student’s IEP, with an initiation date of December 8, 2003 (December IEP).
3. The December IEP called for 30 minutes daily (or a total of 150 minutes per week) of direct, pull-out services with the teacher licensed in the area of hearing impaired (H.I. Teacher). During the period beginning December 8, 2004, and ending February 18, 2004, there were 38 days (or 7.6 weeks) when school was in session and the Student was in attendance. On 18 of those days, the H.I. Teacher provided 30 minutes of direct service. On 3 days, the H.I. Teacher provided more than 30 minutes of direct service (i.e., the required 30 minutes plus a total of 55 additional minutes) to make up for lost time. On 1 day, the H.I. Teacher provided 10 minutes of direct service. On 16 days, the H.I. Teacher provided no direct service to the Student. Whereas the December IEP required a total of 1,140 minutes of direct, pull-out services, the Student received a total of 695 minutes of direct service during the 38 instructional days. In particular, the School acknowledges that the Parent is correct that direct services by the H.I. Teacher were not provided on February 3 and 4, 2004. Although the H.I. Teacher’s first progress report stated that the H.I. has “just started to meet with [the Student] for 30 minutes each day,” the School denies that direct services “started” only in February, 2004. Rather, the H.I. Teacher meant to say that services had re-started after school cancellations (snow days) during the week of January 26 – 30, 2004, and the H.I. Teacher’s absences during the week of February 2 – 6, 2004. In addition, prior to the initiation date of the December IEP, the H.I. Teacher spent 1,300 minutes (15 hours) with the Student. However, the School has not documented that all of the minutes were utilized for direct, pull-out services, and the services provided prior to the initiation date of the December IEP included observation/assistance and interpreting.
4. The December IEP called for 60 minutes per week of speech/language services. The amount of services provided is not in dispute. The December IEP contains two goals in the area of speech/language: an expressive/receptive language goal and an articulation goal. Each goal has four short-term instructional objectives, with the identical initiation date. The Parent alleges that the following objective under the receptive/expressive language goal was not addressed by the speech/language pathologist (SLP): “learn 10 new vocabulary words and use the words in a sentence appropriately, from these units: community workers, sports, verbs, adjectives, tools, household objects - parts of house, feelings, categorical nouns.” Instead of addressing each goal/objective separately, the SLP utilized a multitasking strategy, teaching vocabulary words and phrases that incorporate the sounds specified in the articulation objectives. The SLP’s approach differed from the instructional materials and approach utilized by service providers at the Student’s previous (out-of-state) school. However, vocabulary words selected by the SLP included verbs, for example.
5. Although interpreter services were not mentioned in the summary of services on the Parent Permission form signed by the Parent, the December IEP identified English/Total Communication as the Student’s language of instruction and listed “sign language interpreter as needed” as an accommodation in the general education program. Prior to the initiation date of the December IEP, the H.I. Teacher served as

the Student's interpreter on an all-day field trip. An interpreter was not available on an as-needed basis during first two weeks following the adoption of the December IEP. During the week beginning January 5, 2004, a newly-hired interpreter began providing interpreting services for the Student in the general education classroom. The School acknowledges that a substitute interpreter was not found when the interpreter was absent on February 3, 2004, and February 4, 2004.

6. The Student's expressive/receptive language goal in the December IEP was, "[The Student] will improve [his/her] understanding and use of vocabulary and grammar in sentences." The goal statement included a reference to a standard from the state where the Student formerly lived. The Parent's letter of complaint alleges a change of goal, but the specific allegation is that there was a change of the short-term objective quoted in Finding of Fact #4. Specifically, the Parent alleges the SLP deviated from the word-list and substituted "enrichment" words. Neither the goal nor the objective incorporates a list of specific words. In written communications between the SLP and the Parent, the SLP mentioned "enrichment" in the context of avoiding duplication with the services provided by the H.I. Teacher (who is also designated as an implementer of the same goal/objective), the classroom teacher, and others.
7. An underlying concern of the Parent is that the School's program design does not support Total Communication to the same extent as the Student's previous school in another state and, in this connection, the Parent alleges that the CCC did not consider the communication needs of the Student including the Student's language and communication needs, opportunities for direct communications with peers and professional personnel in the Student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the Student's language and communication mode. The Student uses multiple modes of communication, as is indicated by Total Communication, and the IEP requires services for multiple modes of communication (oral and sign). The CCC considered the special factors by adopting not only the goals and objectives of the out-of-state IEP but also the inclusive setting called for by the pre-existing IEP. In addition, the CCC specified assistive technology (an auditory trainer and subsequently an FM system with closed captioning) and agreed upon interpreter services as well as frequent direct services from the H.I. Teacher and the SLP.
8. On February 19, 2004, the CCC reviewed the December IEP and revised the Student's IEP by changing certain service descriptions (February IEP). Whereas the December IEP called for support services from a special education teacher of service, the February IEP called for support from the general education teacher, and the list of adaptations was shortened. A full-time interpreter was added as a related service. The amount of direct, pull-out services to be provided by the H.I. Teacher and the SLP remained the same, and goals/objectives were not changed. In recognition of the interpreter service change, efforts were promptly initiated to find a substitute interpreter in the event that the Student's interpreter was absent.
9. The discussion notes of the February 19th CCC include the assurance that time lost due to the H.I. Teacher's absences would be made up, rather than hiring a substitute. During the period beginning February 19, 2004, and ending May 10, 2004, there were 52 days (or 10.4 weeks) when school was in session and the Student was available for services. (On March 13, 2004, the Student was not available due to testing.) On 28 of those days, the H.I. Teacher provided 30 minutes of direct service. On 16 days, the H.I. Teacher provided more than 30 minutes of direct service (i.e., the required 30 minutes plus a total of 205 additional minutes) to make up for lost time. On 1 day, the H.I. Teacher provided 10 minutes of direct service. On 7 days, the H.I. Teacher provided no direct service to the Student. Whereas the February IEP required a total of 1560 minutes of direct, pull-out services during the 52-day period, the Student received a total of 1535 minutes of direct service. In addition, during the period from May 11, 2004, through May 21, 2004, the H.I. Teacher provided 35 minutes of direct service in addition to the 270 minutes required by the February IEP.

10. In response to discussions during the February 19th CCC regarding the vocabulary-building objective, the SLP shifted to a thematic approach including, for example, animal words. The SLP also continued the multi-tasking approach, creating learning experiences that blended more than one goal/objective.
11. The School acknowledges that the interpreter was absent, and no substitute was available on the following 5 ½ days during the period beginning February 19, 2004, and ending on the date this Complaint was filed: February 25, 2004; February 26, 2004; February 27, 2004; March 4, 2004 (half-day); and April 29, 2004.
12. The School acknowledges that a copy of the written report of the February 19th CCC meeting was neither provided to the Parent at the conclusion of the CCC meeting nor mailed to the Parent within 10 business days after February 19, 2004.
13. On May 6, 2004, the Parent received a copy of the written report of the February 19th CCC meeting.
14. The Student's IEPs (both the December IEP and the February IEP) require quarterly progress reports. The first report card day following the Student's enrollment was January 16, 2004. Although the Student had not been enrolled for the full grading period, the School does not dispute that progress reports were due on January 16, 2004. The School acknowledges that progress reports, other than the report card itself, were not provided on January 16, 2004.
15. The H.I. Teacher provided a progress report on or about February 12, 2004. During the CCC meeting on February 19, 2004, the failure to provide a timely speech/language progress report was noted, and assurances were offered that progress report(s) would be provided within a week. The SLP's progress notes were dated February 24, 2004, and received by the Parent on February 27, 2004.
16. The Parent's letter of complaint asserts that measurements are required in progress reports. The December IEP and the February IEP are identical with respect to goals and objectives as well as progress reporting. The pre-printed IEP form allows space for comments under the following codes: P = Progressing; M = Mastered; NB = Not Yet Begun; D = Having Difficulty; C = Close Out. Although the criteria for mastery (percentages, number of errors, etc.) of each goal/objective are stated, the quarterly progress notes written by the Student's former teachers do not utilize or refer to those criteria in all instances.
17. The SLP's progress reports were written on a copy of IEP goals and objectives pages. Following the format of the Student's prior teachers, the SLP circled the applicable code and added comments, sometimes utilizing percentages (or other numerical data) and sometimes not. In addition, at the Parent's suggestion, the SLP and the Parent maintain a two-way communication log for each speech/language session, reporting activities, skills to be practiced, progress, etc.
18. The IEP designates the H.I. Teacher as the implementer of the Reading/Language Arts and "Coping Strategies" goals/objectives. The IEP specifies report cards as the method for informing the parent of progress on these goals. As a supplement to the report card, the H.I. Teacher's progress reports are narratives including verbatim restatements of these goals/objectives. As some of the combined goals/objectives describe services and accommodations (e.g., "will preview and review vocabulary from the curriculum in a quiet one-to-one setting."), the H.I. Teacher's narratives address services provided as well as the Student's needs and accomplishments. However, where applicable, the H.I. Teacher's narratives incorporate measured data (e.g., test results on Dolch sight words).

19. The School's written policy on visitors is found in the student handbook (called the "school Agenda"), as follows:

Due to safety concerns parents/guardians or volunteers are required to check in through the main office when visiting the school. ALL VISITORS TO OUR SCHOOLS MUST SIGN IN AND WEAR A VISITOR BUTTON OR NAME TAG. Teachers will be notified prior to visitors being allowed to proceed to the classroom. Parents wishing to sit in on a classroom lesson should make arrangement 24 hours in advance.

The Parent acknowledges that the Student received the school Agenda.

20. On at least one occasion, the Parent visited the Student's classroom and the Student's speech/language session without making prior arrangements. On April 29, 2004, when the Parent sought to observe the Student's small group speech/language session, the Parent was denied access to the session because of concerns about other students' right to confidentiality and because of the Parent's failure to make prior arrangements.
21. The School acknowledges that its policy does not prohibit visits to special education classrooms, including self-contained classrooms and speech/language classrooms. Further, the School recognizes that, while confidentiality prohibits disclosing to visitors confidential information from other students' educational records, confidentiality does not prohibit visits to special education classrooms by parents and service providers for current and prospective students. The local director of special education will provide additional clarification, by memorandum or inservice training, regarding this point.

CONCLUSIONS:

1.
 - a. Findings of Fact #2 and #3 indicate that during the period from December 8, 2003, through February 18, 2004, the School failed to provide 7 hours and 45 minutes of direct services from the H.I. Teacher. Therefore, a violation of 511 IAC 7-27-7(c)(2) occurred, specifically by failing to provide the required amount of direct services from an H.I. Teacher.
 - b. Findings of Fact #2 and #4 indicate that during the period from December 8, 2003, through February 18, 2004, speech/language services were provided in accordance with the December IEP, despite the utilization of an approach that differed from the manner in which the same goals/objectives had been implemented in the Student's previous school. Short-term objectives are not specific lesson plans. Therefore, no violation of 511 IAC 7-27-7(c)(2) occurred with respect to speech/language services addressing vocabulary units.
 - c. Findings of Fact #2 and #5 indicate that interpreter services were delayed for two weeks and subsequently interrupted on two days during the period from December 8, 2003, through February 18, 2004. Notwithstanding the 10-day grace period allowable under 511 IAC 7-27-7(c) (2), services must be provided by the initiation date stated in a student's IEP when the School offers an initiation date earlier than 10 instructional days after the case conference committee (CCC) meeting for a newly-enrolled student who had received special education services in another state. Therefore, a violation of 511 IAC 7-27-7(c)(2) occurred, specifically by failing to provide interpreter services as of the initiation date of the IEP and due to subsequent interruptions of services.
2. Findings of Fact #2, #4, and #6 indicate that the Student's speech/language goals and objectives were not revised. Finding of Fact #7 indicates that the CCC did not fail to consider the Student's language and communication needs, and the Parent provided consent for both the December IEP and the February IEP. A complaint investigation cannot alter an IEP, and if the Parent believes the IEP requires changes, the CCC is the appropriate forum for further consider of special factors. Therefore, no violation of 511 IAC 7-27-4(c) occurred.

3.
 - a. Findings of Fact #8 and #9 indicate that, as of May 21, 2004, the amount of direct services from the H.I. Teacher had been provided as contemplated by the February IEP, including make-up time for days when the H.I. Teacher was absent, plus 10 minutes. Therefore, no violation of 511 IAC 7-27-7(a) occurred with respect to direct services by the H.I. Teacher during the period beginning February 19, 2004.
 - b. Findings of Fact #2, #4, #6, #8, and #10 indicate that speech/language services were provided in accordance with the February IEP. Therefore, no violation of 511 IAC 7-27-7(a) occurred with respect to speech/language services.
 - c. Findings of Fact #8 and #11 indicate that interpreter services required by the February IEP were not provided on 5 ½ days. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the student's IEP as written, specifically by failing to provide full-time interpreter services on all days.
4. Finding of Fact #12 indicates that the School failed to provide the parent with a copy of the written CCC report within 10 business days after the date of the CCC meeting that convened on February 19, 2004. Therefore, a violation of 511 IAC 7-27-5(c) occurred. However, Finding of Fact #13 indicates that appropriate corrective action has been taken.
5. Finding of Fact #14 indicates that timely progress reports were not provided to the Parent, and Finding of Fact #15 indicates that appropriate corrective action had been taken prior to the filing of this Complaint. Findings of Fact #16, #17, and #18 indicate that the progress reports contained the information required by the Student's IEP. Therefore, as of the date this Complaint was filed, there was no uncorrected violation of 7-27-7(a) by failing to implement the Student's IEP as written, specifically by failing to provide progress reports that were on time and contained the information required by the IEP.
6. Findings of Fact #19, #20, and #21, indicate that, although School policy may have been misinterpreted or misapplied on occasion, School policy allows the Parent to observe the student's speech/language sessions, and the School provided the Parent with a copy of written policies and procedures regarding visiting/observing during school hours. Finding of Fact #21 also indicates that, to the extent that the policy was misinterpreted, voluntary corrective action has been proposed. Visitation policies are not governed by state law or state rules, and the rule in Article 7 regarding parent and community participation does not address visits to schools. Therefore, no violation of 511 IAC 7-21-1(a) occurred.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

By September 3, 2004, Spencer-Owen Community Schools and Forest Hills Special Education Cooperative shall reconvene the Student's CCC to determine the manner in which 7 hours and 35 minutes of compensatory H.I. services shall be provided (taking into consideration additional services that may have been provided after May 21, 2004) and to determine the additional compensatory services, if any, that shall be provided due to the delay/interruptions in providing interpreter services. As these services were designed to support the Student's participation in the general education curriculum, and the 2003-2004 school year has ended, the Parent may waive some or all compensatory services, if desired.

Documentation of compliance, consisting of the CCC Report/IEP and Parent Permission form, shall be submitted to the Indiana Department of Education, Division of Exceptional Learners, by September 10, 2004.